TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible] 1904.

No. 39.

BALTIMORE SHIPBUILDING AND DRY DOCK COMPANY OF BALTIMORE CITY, PLAINTIFF IN ERROR,

vs.

THE MAYOR AND CITY COUNCIL OF BALTIMORE ET AL.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

FILED MAY 26, 1904.

(15,[illegible])

(18,936.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 286.

BALTIMORE SHIPBUILDING AND DRY DOCK COMPANY OF BALTIMORE CITY, PLAINTIFF IN ERROR,

vs.

THE MAYOR AND CITY COUNCIL OF BALTIMORE ET AL.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 29, 1904.

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1 January Term, 1903.

STATE OF MARYLAND, *sct:*

At a court of appeals for the State of Maryland, begun and held for the said State, at the city of Annapolis, on the second Monday of January, being the twelfth day of said month in the year of our Lord, one thousand nine hundred and three and of the Independence, of the United States of America, the one hundred and twenty-seventh.

Chief Judge McSherry, Judges Pearce, Page, Fowler, Boyd, Jones, Briscoe, Schmucker. Thomas Parran, clerk.

Among other, were the following proceedings, to wit:

2 *Petition of Allowance of Writ of Error and Order Thereon.*

Filed April 22nd, 1903.

In the Supreme Court of the United States.

BALTIMORE SHIPBUILDING AND DRY DOCK Company of Baltimore City *vs.* MAYOR AND CITY COUNCIL OF BALTIMORE and Conway W. Sams, Solomon H. Freeburger, and Oscar Leser, Judges of Appeal Tax Court.	In the Court of Appeals of Maryland.

Petition for allowance of writ of error.

To the Honorable James McSherry, chief judge of the court of appeals of Maryland:

3 The petition of the Baltimore Shipbuilding and Dry Dock Company of Baltimore City, by Taylor and Keech and Leon E. Greenbaum, its counsel of record, respectfully show- to your honor:

First. That as appears in the above entitled proceedings an assessment for the purposes of taxation by the State of Maryland and mayor and city council of Baltimore, has heretofore been laid, by the mayor and city council of Baltimore, and the judges of the appeal tax court of said city, upon certain lands and real property, held by and in the possession of said appellant corporation, under and in pursuance of the terms and provisions of a certain act of Congress of the United States, approved June 19, 1878, the making of which assessment was resisted by said appellant in and before the said appeal tax court at the time the same was made, for the reasons and on the grounds set forth in the petition of appeal, and

the amendment thereof, filed in the Baltimore city court, according to statutes in such cases made and provided, and from the
4 making of which by the said appeal tax court said appellant appealed to the Baltimore city court, as by law provided, which latter court affirmed the action of said appeal tax court in so far as it held said lands and real property to be assessible for the purposes of State and municipal taxation, and that from the order of said Baltimore city court, affirming, in the manner aforesaid, the assessment made upon said lands by said appeal tax court, said appellant did appeal to this honorable court, the highest court of this State in which a decision of the matter, now complained of, could be had, and that this honorable court did, by its order, judgment or decree, made and passed on the second day of April, 1903, affirmed the aforesaid order, judgment or decree of the Baltimore city court, wherein was drawn in question the construction of a clause of the Constitution of, or of a treaty of, or of a statute of, or of a commission, held under the United States, and particularly the constitution of the act of Congress, approved June 19, 1878, and entitled
5 "An act granting a site for a dry-dock in the city of Baltimore upon certain conditions," hereinbefore referred to, and of a certain deed of conveyance made by Honorable George W. McCrary, Secretary of War of the United States. to said appellant corporation, dated March 26, 1879, and recorded among the land records of Baltimore city, in pursuance thereof, and the decision of this honorable court was against the title, rights, privileges or exemptions, specially accorded to and claimed by said appellant corporation under such clause of said Constitution, treaty, statute or commission of the United States.

Second. That your petitioner is advised, and doth therefore aver, that by virtue of the matters and facts herein set forth, it is entitled to have this cause heard, and its rights in the premises determined, by the Supreme Court of the United States on a writ of error directed to this honorable court.

Wherefore your petitioner prays that it may be allowed a
6 writ of error from the Supreme Court of the United States directed to the court of appeals of Maryland, touching the matters in this petition set forth, and the matter of the title, right, privilege or exemption, so as aforesaid accorded to and claimed by your petitioner under the clause of the Constitution, or treaty, or statute, or commission of the United States, hereinbefore referred to, which have been denied to it by the final decree of this honorable court, as aforesaid; and that the decision, order, judgment or decree of this honorable court, in the manner complained of, may be reversed.

And this it will ever pray.

ARCHIBOLD H. TAYLOR,
E. P. KEECH, JR.,
LEON E. GREENBAUM,
Counsel for Petitioner.

Let a writ of error issue as prayed on the filing of an appeal
7 bond in the penalty of one thousand dollars, to be approved by the undersigned.

JAMES McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

Writ of Error.

Filed April 22nd, 1903.

UNITED STATES OF AMERICA, *ss:*

[The Seal of the Circuit Court of Maryland.]

The President of the United States of America to the honorable the judges of the court of appeals of the State of Maryland, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals
8 of the State of Maryland before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Baltimore Shipbuilding and Dry Dock Company of Baltimore City *was* appellant, and The Mayor and City Council of Baltimore, Conway W. Sams, Solomon H. Freeburger and Oscar Leser, judges of the appeal tax court of said city, *were* appellees, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United
9 States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Baltimore Shipbuilding and Dry Dock Company; *a manifest error hath happened to the great damage of the said Baltimore Shipbuilding and Dry Dock Company* of Baltimore City, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington,

within 30 days from the date hereof, that the record and
10 proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the twenty-first day of April in the year of our Lord one thousand nine hundred and three.

JAS. W. CHEW,
Clerk of the Circuit Court of the United States for the District of Maryland.

Allowed by
JAMES McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

11 *Assignment of Error.*

Filed April 22nd, 1903.

In the Supreme Court of the United States.

BALTIMORE SHIPBUILDING AND DRY Dock Company of Baltimore City *vs.* MAYOR AND CITY COUNCIL OF BALTIMORE and Conway W. Sams, Solomon H. Freeburger, and Oscar Leser, Judges of Appeal Tax Court.	On Writ of Error to the Court of Appeals of Maryland.

Now comes The Baltimore Shipbuilding and Dry Dock — of Baltimore City, the plaintiff in error in the above entitled cause, and assigns error in the order, judgment or decree of the court of — Maryland, heretofore, on April 2nd, 1903, entered and made in these proceedings, to wit:

12 First. For that by the aforesaid order, judgment or decree of the court of appeals of Maryland, said court decided and held that an assessment for the purposes of State and municipal taxation could be, and the same was thereby, made by the State of Maryland and the mayor and city council of Baltimore, upon certain real property, being the lands and improvements thereon, mentioned in the petition of appeal in these proceedings, in which said real property the United States have an interest, right and title.

Second. For that by the aforesaid order, judgment or decree of the court of appeals of Maryland, said court decided and held that an assessment for the purposes of State and municipal taxation could be, and the same was thereby, made by the State of Maryland and mayor and city council of Baltimore, upon the interest of

the appellant corporation in certain real property, being the
13 lands and improvements thereon mentioned in the petition of appeal in these proceedings, in which said real property the United States also have an interest, right and title.

Third. For that by the aforesaid order, judgment or decree of the court of appeals of Maryland, said court decided and held that an assessment for the purposes of State and municipal taxation could be and the same was thereby, made by the State of Maryland and the mayor and city council of Baltimore, upon certain real property, being the lands and improvements thereon, mentioned in the petition of appeal in these proceedings, which said real property is now being, used for a public purpose by the United States.

Fourth. For that by the aforesaid order, jud-ment or decree of the court of appeals of Maryland, said court decided and held that an assessment for the purposes of State and municipal taxation could be, and the same was thereby, made by the State of
14 Maryland and mayor and city council of Baltimore, upon certain real property, being the lands and improvements thereon, mentioned in the petition of appeal in these proceedings, which said real property is and constitutes an agency of the United States, used by them in the exercise of constitutional powers vested in the United States.

Fifth. For that by the aforesaid order, judgment or decree of the court of appeals of Maryland, said court decided and held that an assessment for the purposes of State and municipal taxation could be, and the same was thereby, made by the State of Maryland and mayor and city council of Baltimore, upon certain real property, being the lands and improvements thereon, mentioned in the petition of appeal in these proceedings, over which said real property the United States are vested with exclusive jurisdiction and
15 power of legislation, and the right and power to exercise the same.

Wherefore the said Baltimore Shipbuilding and Dry Dock Company of Baltimore City prays that said final order, judgment or decree of said court of appeals of Maryland be reversed, and that the error herein complained of may be ratified.

And this it will ever pray etc.

ARCHIBALD H. TAYLOR.
E. P. KEECH, JR.
LEON E. GREENBAUM.

Citation.

Filed April 22nd, 1903.

UNITED STATES OF AMERICA, ss:

To the Mayor and City Council of Baltimore, Conway W. Sams Solomon H. Freeberger, and Oscar Leser, judges of the ap-
16 peal tax court of Baltimore city, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the court of appeals of the State of Maryland wherein The Baltimore Shipbuilding and Dry Dock Company of Baltimore City a corporation, is plaintiff in error and you are defendant in error, to show cause if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable James McSherry chief judge of the court of appeals of Maryland, this eighteenth day of April, in the year of our Lord one thousand nine hundred and three.

JAMES McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

17 Service of within citation admitted this 21 day of April 1903.

OLIN BRYAN,
Counsel for All Defendants in Error.

18 In the Baltimore City Court, September Term, 1902.

THE BALTIMORE SHIPBUILDING AND DRY DOCK COMPANY OF BALTIMORE CITY, Appellant,
vs.
MAYOR AND CITY COUNCIL OF BALTIMORE and THE APPEAL TAX COURT, Appellee-.

October 17th, 1902.—The following petition and appeal was filed:

In the Baltimore City Court.

BALTIMORE SHIPBUILDING AND DRY DOCK COMPANY OF BALTIMORE CITY, a Corporation,
vs.
THE MAYOR AND CITY COUNCIL OF BALTIMORE and CONWAY W. SAMS, SOLOMON H. FREEBURGER, and OSCAR LESER, Judges of the Appeal Tax Court.

To the honorable the judge of said court:

The petition of the Baltimore Shipbuilding and Dry Dock Company of Baltimore City, a corporation of the State of Maryland, respectfully shows to your honor:

First. That your petitioner is a corporation organized under the laws of the State of Maryland, with the present and amended corporate name and title above set forth, and with the former corporate name and title of the "Baltimore Dry Dock Company of Baltimore City," and is engaged in the maintenance and operation of a dry dock on certain lands, hereinafter referred to, in the city of Baltimore and in the business of building, constructing and repairing ships and vessels in the city of Baltimore, State of Maryland, duly certified copies of which articles of incorporation and two certain amendments thereto are herewith filed marked Petitioner's Exhibit- A, B and C and are prayed to *to* taken as part hereof.

Second. That its office, works and dry dock are located on certain lands situate at Locust point, having a front on the Pa-
19 tapsco river, and constituting a part of the Fort McHenry, tract, belonging to the Government of the United States of America, and more particularly described as follows, that is to say:

"So much of the land belonging to the United States, in said city of Baltimore, known as the Fort McHenry tract, as lies between the northwestern boundary line of the said tract, and a line parallel thereto and distant four hundred and fifty feet therefrom, and between a line of two hundred and fifty feet from the northern side of Fort avenue (a street or avenue of said city extended) and parallel thereto, and the northwest branch of the Patapsco river."

Third. That the only title to said land vested in your petitioner, is so vested by virtue of a deed bearing date the 26th. day of March, 1879, and recorded among the land records of Baltimore city in Liber F. A. P. No. 836, folio 557 etc., from George W. McCrary, Secretary of War of the United States, to your petitioner, made in pursuance of an act of Congress, passed and adopted at the second session of the Forty-fifth Congress of the United States, and known as chapter 310, of the acts of said Congress entitled "An act granting a site for a dry dock in the city of Baltimore upon certain conditions," and approved June 19th. 1878; and that the conveyance of said land by said Honorable George W. McCrary, Secretary of War of the United States, was made to your petitioner, and your petitioner holds said land upon, and only upon, the conditions set forth in said act of Congress, and in the deed of said land made in pursuance thereof as aforesaid, which conditions are set forth in section 2 of said act of Congress, and are as follows:

SECTION 2. That in consideration of the said conveyance, and as the condition upon which the same is made, the said dry dock company shall be required to construct, upon the land conveyed as aforesaid, within two years from the date of conveyance, an efficient Simpson's improved dry dock, four hundred and fifty feet in length, and to accord to the United States the right to the use forever of the said dry dock, at any time, for the prompt examination and repair of vessels belonging to the United States free from charge for docking; and if at any time said property hereby conveyed shall be diverted to any other use than that herein named, or if the said dry dock shall be at any time unfit for use for a period of six months, or more, the property hereby conveyed with all its privileges and appurtenances shall revert to and become the absolute property of the United States, duly certified copies of which deed and act of Congress are herewith filed marked Petitioners' Exhibits D and E, and are prayed to be taken as part hereof.

Fourth. That your petitioner is advised by counsel, and doth therefore aver that by virtue of the matters and facts hereinbefore set forth, and, particularly, by virtue of the fact that your petitioner is not vested with indefeasible title to said land, but that re-
20 versionary title to the same is reserved to, and is vested in the United States, as by reference to said act of Congress and said deed, made in pursuance thereof, will more fully appear that the title of your petitioner to said land is liable to be divested at any time on the happening of any of the contingencies, mentioned and set forth in said act of Congress and deed, that the same are liable to, and will, upon the happening of any one of said contingencies, revert to the United States of America; and that said lands are held by your petitioner, upon, and only upon, the conditions, set forth in said act of Congress and deed, said land and premises and appurtenances thereof are not subject to taxation by the State of Maryland and by the mayor and city council of Baltimore.

Fifth. That the appeal tax court of Baltimore city did, on the 30th. day of September, 1902, assess said real estate for the purposes of taxation for the year 1903, to your petitioner, as owner of the same at the sum of seventy-five thousand dollars.

Sixth. That the exemption of said land and appurtenances from taxation by the State of Maryland and mayor and city council of Baltimore was expressly raised, alleged and claimed by your petitioner before the appeal tax court of Baltimore city, and the nature of the tenure of said land by your petitioner was expressly called to the attention of the judges of said appeal tax court, before any assessment was made for the purposes of taxation by the State of Maryland and mayor and city council of Baltimore, as aforesaid; and that by the decision, judgment and decree of said appeal tax court assessing or attempting to assess for the purpose of taxation said lands, there was drawn in question the construction of a clause of the Constitution, or of a treaty, or of a statute, or of a commission held under the United States, and particularly the construction of the act of Congress, approved June 19th, 1878, as aforesaid, and the decision of said court was against the title, right, privilege or exemption, specially set up or claimed by your petitioner under such clause of said Constitution, treaty, statute or commission of the United States.

Seventh. That your petitioner is aggrieved and injured because of and by the assessment of said lands and premises which is illegal, unequal and erroneous.

1. Because said lands are not subject to taxation by the State of Maryland and mayor and city council of Baltimore.

2. Because of the overvaluation and overassessment of said lands, and because said assessment is excessive and greater than the value of said lands to your petitioner.

And for other reasons to be shown at the hearing.

Wherefore your petitioner prays an appeal to this honorable court and that this court may review, strike out and correct
21 said illegal and erroneous assessments, and that your petitioner may have such other and further relief etc.

And as in duty bound etc.

McCOMAS, GAITHER & GREENBAUM,
TAYLOR & KEECH,
Attorneys for Baltimore Shipbuilding and Dry Dock Company of Baltimore City.

[SEAL.] BALTIMORE SHIPBUILDING AND DRY DOCK COMPANY OF BALTIMORE CITY,
By J. TRIPLETT HAXALL, *Secretary.*

And the following exhibits were also filed with the petition and appeal; and are as follows, A, B, C, D and E.

The Baltimore Dry Dock Company.

Certificate of Incorporation.

Know all men by these presents that we, James Carey Coale, Charles Morton Stewart, Decatur H. Miller, Robert Garrett and George A. Von Lingen all residing in the city of Baltimore in the State of Maryland, being citizens of the United States and a majority of whom are citizens of the State of Maryland, do hereby certify that we do under and by virtue of the general laws of this State authorizing the formation of corporations hereby form a corporation under the name of the Baltimore Dry Dock Company of Baltimore City.

2. We do further certify that the said corporation so formed is a corporation for constructing and operating a Simpson improved dry dock to be used in docking vessels for examination and repair. Also for the purpose of erecting work- for and conducting the business of building and repairing steamships and other vessels the construction and repair of steam and other machinery and such other operations as usually pertain to ship yards, docking yards and machinery works; that the term of existence of the said corporation is limited to forty years, and that the said corporation is formed upon the articles, conditions and provisions herein expressed, and subject in all particulars to the limitations relating to corporations which are contained in the general laws of this State.

3. We do further certify that the operations of the said corporation are to be carried on in Baltimore city, Baltimore county and Anne Arundel county, and that the principal office of the said corporation will be located in Baltimore city.

4. We do further certify that the aggregate of the capital stock of the said corporation is one million dollars and the said capital is divided into ten thousand shares of the par value of one hundred dollars each.

22 5. We do further certify that the said corporation will be managed by a board of directors and that James Carey Coale, Charles Morton Stewart, Decatur H. Miller, Robert Garrett and George A. Von Lingen are the names of the directors who will manage the concerns of said corporation for the first year.

In witness whereof we have hereunto set our hands and seals this first day of December, in the year eighteen hundred and seventy seven.

JAMES CAREY COALE. [SEAL.]
C. MORTON STEWART. [SEAL.]
DECATUR H. MILLER. [SEAL.]
ROBERT GARRETT. [SEAL.]
G. A. VON LINGEN. [SEAL.]

Witness:
JNO. T. MADDOX.

STATE OF MARYLAND, *Baltimore City,* } *To wit:*

Before the subscriber, a justice of the peace of the State of Maryland, in and for the city of Baltimore personally appeared on this first day of December, eighteen hundred and seventy-seven, James Carey Coale, Charles Morton Stewart, Decatur H. Miller, Robert Garrett and George A. Von Lingen and did severally acknowledge the foregoing certificate to — their act and deed.

JNO. T. MADDOX, *J. P.*

I, George W. Dobbins, one of the judges of the supreme bench of Baltimore city, do hereby certify that the foregoing certificate has been submitted to me for my examination. And I do further certify that the said certificate is in conformity with the provisions of the law authorizing the formation of said corporation.

GEORGE W. DOBBIN.

December 13th 1877.

Filed for record Dec. 14th 1878 at 1½ o'cl'k p. m. same day rec'd and ex'd per Geo. Robinson, clerk.

I hereby certify that the foregoing is a true copy taken from Liber G. R. No. 19, folio 370 &c. One of the charter records of Baltimore city.

In testimony whereof I hereto set my hand and affix the seal of the superior court of Baltimore city this 9th day of October, A. D. 1902.

[SEAL.] ROB'T OGLE,
Clerk of the Superior Court of Baltimore City.

Baltimore Dry Dock Company of Baltimore City.

Certificate of Reduction of Capital Stock.

At a meeting of the members of the Baltimore Dry Dock
23 Company of Baltimore City held at their office in the city of Baltimore on the fourteenth day of December, 1878, there were present as follows: James Carey Coale, L. Morton Stewart, Decatur H. Miller and Robert Garrett, being a majority of the members named in the articles of incorporation heretofore filed in the records of the superior court of Baltimore city on the fourteenth day of December, 1877, when James Carey Coale was called to the chair and Robert Garrett appointed secretary. The following resolutions *was* then offered by C. Morton Stewart and unanimously adopted:

Whereas since the organization of this company and before any stock has been subscribed therein it has been ascertained that it will

not be necessary with a view to the object therefore that the capital stock should be one million dollars as provided in the original certificate of incorporation,

Therefore be it resolved that the provisions of the charter of the said corporation shall be so far altered as to reduce the capital stock of the Baltimore Dry Dock Company of Baltimore City to three hundred and sixty five thousand five hundred dollars, divided into three thousand six hundred and fifty-five shares of one hundred dollars each

Resolved that the proceedings of this meeting be submitted to a judge of the supreme bench of Baltimore city in order that he may determine whether the alteration above mentioned is in conformity with the laws.

In testimony whereof the members of the said corporation have hereto set their hands and seals:

JAS. CAREY COALE. [SEAL.]
C. MORTON STEWART. [SEAL.]
DECATUR H. MILLER. [SEAL.]
ROBERT GARRETT. [SEAL.]

Test: A. HARRIS.
Test: THOS. W. MORSE.

STATE OF MARYLAND, *City of Baltimore,* } *sct:*

Be it remembered that on this fourteenth day of December, in the year 1878 personally appeared before me the subscriber a justice of the peace of the State of Maryland, in and for Baltimore city, James Carey Coale, C. Morton Stewart, Decatur H. Miller and Robert Garret, and acknowledged the above instrument of writing to be their several act and deed.

THOS. W. MORSE, *J. P.*

STATE OF MARYLAND, *City of Baltimore.* }

Be it known that I, George W. Dobbin a judge of the su-
24 preme bench of Baltimore city have examined the above proceedings and hereby certify that the alteration in the provision of the charter of the Baltimore Dry Dock Company of Baltimore City therein set forth is in conformity with law, no stock having been subscribed, and the said alterations being made in conformity with provisions of the forty-second section of article twenty-six of the Code of Public General Laws.

GEORGE W. DOBBIN.

Dec. 17th. 1878.

Filed for record Dec. 17th. 1878 at 10 o'cl'k a. m. Same day rec'd and ex'd per F. A. Prevost clerk.

I hereby certify that the foregoing is a true copy taken from Liber F. A. P. No. 20, folio 242 etc. One of the charter records of Baltimore city.

In testimony whereof I hereto set my hand and affix the seal of the superior court of Baltimore city this 9th. day of October A. D. 1902.

[SEAL.] ROBT OGLE,
Clerk of the Superior Court of Baltimore City.

Baltimore Dry Dock Company of Baltimore City.

Amendment Changing Name to Baltimore Shipbuilding and Dry Dock Company of Baltimore City.

Know all men by these presents: That at a general meeting of the stock holders of the Baltimore Dry Dock Company of Baltimore City, a body corporate incorporated under the general laws of the State of Maryland by certificate of incorporation dated December 1st. 1877, and recorded among the charter records of Baltimore city in Liber G. R. No. 19, folio 370 etc. and amended by two certificates of amendment thereof dated December 14th. 1877 and November 30th. 1881 respectively, and recorded among the charter records of Baltimore city in Liber F. A. P. No. 20, folio 242 etc. and Liber F. A. P. No. 22, folio 13 etc. respectively, held at the office of the company in the city of Baltimore on the eighth day of January 1902, at which were present in person or by proxy the holders of a majority of all the shares of the capital stock of said corporation, being a quorum thereof, it was resolved with unanimous assent of each and all of the stockholders present at said meeting that the articles of incorporation of this company be amended in such manner that the name of this company be changed to read and be the "Baltimore Shipbuilding and Dry Dock Company of Baltimore City" and in such manner that the number of directors to manage the affairs of said company be increased from seven to twelve. And it was resolved that the undersigned who constitute the board of directors of this company, or any five of them, be authorized on behalf of said corporation to sign, seal, acknowledge and cause to be recorded and do all things necessary to give effect to a certificate of amendment of said articles of incorporation according to law and the terms of said resolution:

Now therefore, the undersigned in pursuance and by virtue of the authority contained in said resolution of said corporation as evidenced by the certificate of the president and secretary thereof under its corporate seal thereto affixed, do certify first that the name of said corporation be and that the same is hereby amended and changed in such manner as to read and to be the "Baltimore Shipbuilding and Dry Dock Company of Baltimore City," instead of the Baltimore Dry Dock Company of Baltimore City, and second that

said corporation will be managed by a board of twelve directors instead of seven as provided by and in said original articles of incorporation, and the amendments thereof hereinbefore referred to.

In witness whereof we have hereunto set our hands and seals this eleventh day of January in the year one thousand nine hundred and two.

JOHN QUITMAN LOVELL. [SEAL.]
JOHN WILLIAM MIDDENDORF. [SEAL.]
DOUGLAS H. GORDON. [SEAL.]
WILLIAM T. STILWELL. [SEAL.]
CHARLES F. MACKLIN. [SEAL.]
GEO. M. SHRIVER. [SEAL.]
RUFUS K. WOOD. [SEAL.]

Test: HARRY L. PRICE.

STATE OF MARYLAND, *Baltimore City,* } *To wit:*

I hereby certify that on this eleventh day of January, 1902, there personally appeared before the subscriber a notary public of the State of Maryland, in and for the city of Baltimore aforesaid, John Quitman Lovell, John William Middendorf, Douglas H. Gordon, William T. Stilwell, Charles F. Macklin, George M. Shriver and Rufuss K. Wood, and they each of them acknowledged the foregoing amended certificate to be their act and deed.

As witness my hand and notarial seal.

[SEAL.] HARRY L. PRICE,
Notary Public.

This is to certify that the aforegoing amendment to the original articles of incorporation of the Baltimore Dry Dock Company of Baltimore City and of the amendments thereof referred to in the foregoing amendment is authorized by said corporation as in the aforegoing amendment set forth.

In witness whereof John Quitman Lovell, president of
26 said corporation hath hereunto set his hand, and J. Triplett Haxall the secretary of said corporation, has hereunto affixed his hand and the seal of said corporation.

JNO. QUITMAN LOVELL,
President.

J. TRIPLETT HAXALL,
Secretary. [SEAL.]

I, Henry Stockbridge, one of the judges of the supreme bench of Baltimore city, do hereby certify that the foregoing amended certificate has been submitted to me for my examination. And I do further certify that said amended certificate is in conformity with

the provision of the law authorizing amendments to the articles of incorporation of said corporation.

HENRY STOCKBRIDGE.

Rec'd for record Jan. 22, 1902, at 2.45 o'cl'k p. m. Same day recorded and ex'd per Rob't Ogle, cl'k.

I hereby certify that the foregoing is a true copy taken from Liber R. O. No. 40, folio 432 &c. one of the charter records of Baltimore city.

In testimony whereof I hereto set my hand and affix the seal of the superior court of Baltimore city, this 10th. day of October, A. D. 1902.

[SEAL.] ROB'T OGLE,
Clerk of Superior Court of Baltimore City.

George W. McCrary, Secretary of War of the United States, to Balto. Dry Dock Co. of the City of Baltimore. } Deed.

This deed made this twenty-sixth day of March, in the year of our Lord eighteen hundred and seventy-nine by me, George W. McCrary, Secretary of War of the United States.

Witnesseth that by virtue and in execution of a power and direction to me as Secretary of War of the United States contained in a certain act of Congress approved on the nineteenth day of June, in the year eighteen hundred and seventy eight entitled "An act granting a site for a dry dock in the city of Baltimore upon certain conditions." I the said George W. McCrary, Secretary of War of the United States do hereby in consideration of the requirements and upon the conditions hereinafter set forth grant and convey in fee unto the Baltimore Dry Dock Company of Baltimore City, a body corporate, created under the laws of the State of Maryland by a certificate of incorporation dated on the first day of December, in the year eighteen hundred and seventy-seven and duly recorded among the charter records of Baltimore city in Liber G. R. No. 19, folio 370 &c. and amended by a certificate dated on the fourteenth day of December, in the year eighteen hundred and seventy eight and duly recorded as aforesaid in Liber F. A. P. No. 20, folio 242 &c.

27 so much of the land belonging to the United States in said city known as th- Fort McHenry tract as lies between the northwestern boundary line of said tract and a line parallel thereto and distant four hundred and fifty feet therefrom and between a line distant two hundred and fifty feet from the northern side of Fort avenue (a street or avenue of said city extended) and parallel thereto and the northwestern branch of the Patapsco river.

Together with the rights, privileges, ways, waters and appurtena-ces belonging to the said parcel of lands so described. The consideration of this conveyance and the condition upon which the same is made being that the said The Baltimore Dry Dock Com-

pany of Baltimore City is required to construct upon the land hereby conveyed within two years from the date of this conveyance an efficient "Simpson's dry dock" four hundred and fifty feet in length and to accord to the United States the right to the use forever of the said dry dock at any time for the prompt examination and repair of vessels belonging to the United States free from charge for docking and that if at any time the property hereby conveyed shall be diverted to any other use than that herein named or if the said dry dock shall be at any time unfit for use for a period of six months or more the property hereby conveyed with all its privileges and appurtenances shall revert to and become the absolute property of the United States.

In testimony whereof I, George W. McCrary, Secretary of War of the United States, have hereunto subscribed my name and caused the seal of the Department of War to be affixed.

Done at the city of Washington this twenty-sixth day of March, in the year of our Lord eighteen hundred and seventy-nine and of the Independence of the United States of America the one hundred and third.

[SEAL.] GEO. W. McCRARY,
Secretary of War.

Witness-:
H. T. CROSBY.
THOS. H. BRADLEY.

DISTRICT OF COLUMBIA, }
City of Washington. }

Be it remembered and it is hereby certified that on this twenty-sixth day of March, in the year of our Lord eighteen hundred a d seventy-nine, before me, the subscriber, a notary public of the District of Columbia, in and for the city of Washington, personally appeared the Honorable George W. McCrary, Secretary of War of the United States, and by virtue of the power and authority conferred upon him by an act of Congress approved on the nineteenth day of June, in the year eighteen hundred and seventy-eight entitled "An act granting a site for a dry dock in the city of Baltimore upon certain conditions," subscribed his name and caused the seal of the Department of War to be affixed to the aforegoing
28 deed in my presence and before me acknowledge- the same to be his act and that of the United States for the purposes therein set forth and declared.

In testimony whereof I, H. T. Crosby, notary public of the District of Columbia, in and for the city of Washington, have hereunto subscribed my name and caused my notarial seal to be affixed this twenty-sixth day of March, in the year eighteen hundred and seventy-nine.

[SEAL.] H. T. CROSBY,
Notary Public.

On the foregoing was the following endorsement: Recorded in War Department Deed Book No. 4 pages 67, 68 and 69. Rec'd for record Mar. 29-79 at 12½ o'cl'k p. m. Same day recorded and ex'd per F. A. Prevost, clerk.

I hereby certify that the foregoing is a true copy taken from Liber F. A. P. No. 836, folio 557 &c. One of the land records of Baltimore city.

In testimony whereof, I hereto set my hand and affix the seal of the superior court of Baltimore city this 9th. day of October, A. D. 1902.

[SEAL.] ROB'T OGLE,
Clerk of the Superior Court of Baltimore City.

No. 17532.

UNITED STATES OF AMERICA,
DEPARTMENT OF STATE.

To all to whom these presents shall come, Greeting:

I certify, that hereto annexed is a true copy of an act of Congress, approved June 19, 1878, the original of which is on file in this department, entitled, "An act granting a site for a dry-dock in the city of Baltimore upon certain conditions."

In testimony whereof, I, *John Hay*, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington this *14th.* day of *October*, A. D. 1902, and of the Independence of the United States of America the one hundred and twenty-seventh.

[SEAL.] JOHN HAY.

An act granting a site for a dry dock in the city of Baltimore upon certain conditions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War be, and he is hereby, directed to convey to the Baltimore Dry Dock Company of Baltimore City, a body corporate, created under the laws of the State of Maryland, for the consideration hereinafter described, so much of the land belonging to the United
29 States, in said city, known as the Fort McHenry tract, as lies between the northwestern boundary line of the said tract, and a line parallel thereto and distant four hundred and fifty feet therefrom, and between a line two hundred and fifty feet from the northern side of Fort avenue (a street or avenue of said city extended), and parallel thereto, and the northwest branch of the Patapsco river.

SEC. 2. That in consideration of the said conveyance, and as the condition upon — the same is made, the said dry dock company shall be required to construct, upon the land conveyed as aforesaid, within two years from the date of the conveyance, an, efficient "Simpson's improved dry-dock," four hundred and fifty feet in length, and to accord to the United States the right to the use forever of the said dry-dock, at any time, for the prompt examination and repair of vessels belonging to the United States, free from charge for docking; and if at any time said property hereby conveyed shall be diverted to any other use than that herein named, or if the said dry-dock shall be at any time unfit for use for a period of six months, or more, the property hereby conveyed with all its privileges and appurtenances shall revert to, and become the absolute property of the United States.

Approved June 19, 1878.

December 11th, 1902.—The following agreed statement of facts was filed, to wit:

In the Baltimore City Court.

BALTIMORE SHIPBUILDING AND DRY DOCK COMPANY of Baltimore City
vs.
THE MAYOR AND CITY COUNCIL OF BALTIMORE, ETC. } Tax Appeal.

Agreement of Counsel.

It is agreed between counsel for the parties in the above entitled cause.

First. That the matters of fact alleged in the petition and appeal of the Baltimore Shipbuilding and Dry Dock Company of Baltimore City, fi-ed in these proceedings, excepting however matters and conclusions of law therein stated, and excepting also the matters of fact and allegations concerning the value of the real estate, concerning which said appeal is taken, are true as set forth in said petition; and that the several exhibits filed with said petition are true and exact copies of the papers and instruments which they respectively purport to be, as set forth in said petition and appeal.

30 Second. That the land and real estate therein referred to, as being held by the said Baltimore Shipbuilding and Dry Dock Company of Baltimore City in the manner in said petition set forth was and is a part of the whole tract of land acquired by and conveyed to the Government of the United States under the following deeds:

A deed from Alexander Furnival, dated July 20th, 1795, recorded among the land records of Baltimore city, in Liber W. G. No. S. S. folio 142 etc.

A deed from William Goodwin, dated November 6th, 1798, recorded among the land records of Baltimore city in Liber W. G. No. 56, folio 440 etc.

A deed from William Goodwin, dated August 26th, 1800, recorded among the land records of Baltimore city in Liber W. G. No. 61, folio 580 etc.

A deed from Thomas B. Dorsey and others, dated September. 10th. 1836, recorded among the land records of Baltimore city in Liber T. K. No. 263, folio 194 etc.

A deed from James Bosley and others, dated September 15th. 1836, recorded among the land records of Baltimore city in Liber T. K. No. 263, folio 196 etc.

A deed from Richard W. Gill, dated November 16th. 1836, recorded among the land records of Baltimore city in Liber T. K. No. 265. folio 189 etc.

A deed from Elizabeth Conkling and others, dated October 8th. 1836, recorded among the land records of Baltimore city in Liber T. K. No. 264, folio 324 etc.; and that said land was acquired by the Government of the United States, with the consent of the State of Maryland, by the terms of the joint resolution of the General Assembly of Maryland, adopted at its November session, 1793, as follows:

"Whereas the United States may think it necessary to erect a fort, arsenal or other military works or buildings, on Whetstone point, for the public defence—therefore, resolved, that upon the application of the President of the United States to the governor, for permission to erect a fort, arsenal, or other military works, on the said point, for the purpose aforesaid, the governor shall and may grant the same, with the consent of the owner of the soil."

Third. It is further agreed, with the assent of the court, that the matters of said appeal shall be first heard by the court upon the question as to whether or not said lands and real estate are subject to taxation by the State of Maryland and the mayor and city council of Baltimore, and that the question as to the fairness, equality and correctness of the assessment of the same, made by the appeal tax court of Baltimore city, as set forth in said petition, shall be reserved until the court shall have made its determination upon the question of the taxability, *vel non*, of said lands, and shall
31 be then heard and determined by the court, in case and in the event that the court shall be of the opinion that said lands are taxable by the State of Maryland and the mayor and city council of Baltimore.

Fourth. It is further agreed that the map or plan of the harbor of Baltimore, prepared by the harbor engineers of Baltimore city is a true map or plan of said harbor, and shows accurately the land in the possession of the appellant corporation under the grant from the United States Government, referred to in the petition and appeal in these proceedings.

Fifth. It is further agreed that the assessment, complained of, is an assessment upon and covers all the land in the possession of the appellant corporation under the grant from the United States Government, referred to in the petition and appeal, and the riparian rights and appurtenances of said land including the piers; and that said assessment is made upon said land and appurtenances, as though it were the property of said appellant corporation; and that said assessment is upon said land, piers and its appurtenances, only, and not upon the buildings and improvements thereupon.

Sixth. It is further agreed, as a fact, subject to any and all legal exceptions on the part of the Mayor and City Council of Baltimore, to the relevancy of the same as proof, that the shares of the capital stock of said appellant corporation are assessed for taxation for 1902 in accordance with the statute of the State of Maryland, providing for the assessment and collection of taxes upon the shares of stock of corporations, incorporated under the laws of the State of Maryland.

McCOMAS, GAITHER & GREENBAUM,
TAYLOR & KEECH,
For Balto. S. B. & D. D. Co.
OSCAR LESER,
Judge of the Appeal Tax Court.
CHAS. W. FIELD,
For Mayor and City Council of Balto.

January 6th, 1903.—The following petition to amend the appellant's petition and appeal and the order of the court thereon was filed, to wit:

In the Baltimore City Court.

THE BALTIMORE SHIPBUILDING AND DRY DOCK COMPANY OF Baltimore City
vs.
THE MAYOR AND CITY COUNCIL OF BALTIMORE CITY, ETC.

32 To the honorable the judge of said court:

The appellant corporation, by its counsel, respectfully shows to your honor:

1. That subsequent to the filing of the petition and appeal in these proceedings, said petitioner discovered that the lands referred to in the above proceedings, had been acquired by the Government of the United States, in pursuance of the joint resolution of the General Assembly of Maryland set forth in the agreed statement of facts, heretofore filed in these proceedings; that, although the said facts were agreed upon by counsel and considered by the court at the hearing of this appeal, yet the same are not expressly set forth in the petition; and that your petitioner desires to amend said petition, so that said facts may be made to appear expressly therein.

2. That your petitioner desires to amend said petition by adding to the fourth paragraph thereof, at the conclusion of said paragraph, the following clause;

"And that said whole Fort McHenry tract, of which the lands held by your petitioner and above referred to, are a part, was purchased by the United States, by the consent of the legislature of the State of Maryland for the purposes expressed in the Constitution of the United States, article 1, section 8, and are still used for such purposes, and that, therefore, the same are not subject to taxation by the State of Maryland and mayor and city council of Baltimore."

Wherefore your petitioner prays that said petition and appeal may be amended in the manner hereinbefore set forth.

And this it will ever pray etc.

LEON E. GREENBAUM,
TAYLOR & KEECH,
Attorneys for Appellant.

Ordered by the Baltimore city court, this sixth day of January, 1903, that leave be, and the same is hereby granted to the appellant corporation to amend the petition and *appellant* in these proceedings in the manner specified in the foregoing petition, and that said petition and appeal be taken and considered as though so amended.

HENRY STOCKBRIDGE.

January 6th, 1903.—The following original notice of the assessment was filed to-wit:

33 Department of Review and Assessment.

Sub-department, Appeal Tax Court.

No. —.

BALTIMORE, *September 24th*, 1902.

Baltimore Dry Dock Company:

You are hereby notified that the valuation of your lot west of Fort McHenry and formerly part thereof, having a water front of 450 feet, with depth of 600 feet, more or less, has been assessed at $10. per front foot, viz: $75,000. for 1903. Appeal, if any, must be made to the appeal tax court, city hall, on or before the thirtieth 30th day of September, 1902.

Respectfully, HENRY A. WILLIAMS, *Assessor.*

January 6th, 1903.—The following opinion of the court, was filed to-wit:

In the Baltimore City Court.

THE BALTIMORE SHIPBUILDING AND DRY DOCK COMPANY of Baltimore City vs. THE MAYOR AND CITY COUNCIL OF BALTIMORE.	Appeal from the Appeal Tax Court.

In view of the peculiar circumstances involved in this case, it seems proper to state briefly in writing the conclusions reached and to indicate the reasons for the judgment which will be rendered. It is of course evident from the refusal of the prayer of the petitioner, that in the view of the court the property upon which the assessment had been made is not property of the United States Government in any sense, but it is property of the corporation, the petitioner. It is, however, property charged with a certain right of use, under definite conditions, by the United States Government, and the character of the uses to which it can be put is limited both by the act of Congress and the terms of the grant. These facts do not in my judgment at all affect the question of the ownership of the property, but rather constitute a charge upon the property not very dissimilar from what would exist if the property was held by the petitioner subject to an easement such as a right of way, or flowage of water, and which charge is therefore a proper element for consideration in the determination of the value of the property, whether that value be taken in the sense of a market value or value for purposes of taxation. There is probably no class of property which it is more difficult to place a proper valuation on than a lot such as this, and opinions of individuals therefore, may naturally be
34 expected to vary widely, since those opinions must inevitably be largely conjectural.

As it seems to me the best indicia by which the court can be guided, are the two actual sales of property not very dissimilarly located and both of which have occurred comparatively recently. These are two sales testified to by the witness Marriott, one of which is designated as the Roman property, sold at the rate of $13.30 a foot, and the other the sale of the lot to the B. & O. R. R. at $23 a foot, or allowing as the witness did for the value of improvements upon this latter lot, at a valuation of $15 per foot for the lot alone.

The average between these two sums, $15 and $13.30 per foot, the lot in the one case being larger and in the other smaller, than the property now in question, is $14.15, which under all the evidence seems to me to be a fair average valuation for this property. Assuming then the sum of $14.15 as being the fair valuation of property such as this, the question arises as to what peculiar conditions there are, surrounding this lot, which might effect such value, and what is a proper allowance to make for them. These conditions are three-

fold; first, the fact that there is no access to the lot upon the land side by any public highway, only over a private right of way used by permission; second, a stipulation in the deeds conveying the property which requires the owner to maintain upon it a dry-dock, thus limiting the uses to which a portion of it at least can be put; and third, the provisions that vessels belonging to the United States shall at any time have the right to be docked there without dockage charges.

The testimony of the witnesses as to the effect upon value of these conditions varies greatly, practically from a complete destruction of value, up to affecting it but slightly. I am of opinion that each one of these is an element to be considered upon this question of value of the lot, and upon consideration of the whole evidence it seems to me that whether for sale purposes, or purposes of taxation it may properly be said to diminish the value of the lot to the extent of one-third of the value of it, and that therefore if the value of this lot relieved of these charges, and in possession of different means of access would be $14.15 per foot, its value as it stands, subject to these charges, and with the means of access as it is, would be properly two-thirds of that sum, or $9.42 per foot, which would make the lot value $70,650, and the assessment as made by the appraisers will therefore be reduced to that sum.

HENRY STOCKBRIDGE.

January 6th, 1903.—The following order and judgment of the court was filed, to wit:

In the Baltimore City Court.

THE BALTIMORE SHIPBUILDING AND DRY DOCK COMPANY of Baltimore City *vs.* THE MAYOR AND CITY COUNCIL OF BALTIMORE.	Appeal from the Appeal Tax Court.

35 This cause coming on to be heard, upon the petition and testimony, and agreed statement of facts, in said cause produced, and argument being thereon had by counsel for the respective parties, it is, by the Baltimore city court, this sixth day of January, 1903, adjudged and ordered, that the property concerned in the appeal in this case, is lawfully subject to taxation by the State of Maryland and the city of Baltimore; and it is further ordered, that the assessment of seventy-five thousand dollars ($75,000) upon the aforesaid property, appealed from in this case, be set aside and reduced to the sum of seventy thousand six hundred and fifty dollars, ($70,650) which amount is hereby fixed by the court as the correct assessment upon said property for the year 1903. And the mayor and city council of Baltimore shall pay the costs of this suit.

HENRY STOCKBRIDGE.

January 7th, 1903.—Appeal prayed to the court of appeals by the appellant.

Appellant's Bill of Exceptions.

The petitioner offered in evidence the several exhibits filed with the petition and appeal in these proceedings, all of which are hereby declared to be taken as part hereof.

There was then submitted to the court the statement of facts, agreed upon between the parties to these proceedings and heretofore filed in these proceedings, which is hereby declared to be taken as part hereof.

The petitioner then offered in evidence the original notice of the assessment of the property referred to in the petition, which is hereby declared to be taken as part hereof.

The petitioner then proved by Daniel C. Coblens, the acting chief assessor of the appeal tax court of Baltimore city, that all assessments of real estate in the city of Baltimore are made upon the whole value of such real estate without regard to particular interests therein.

Testimony was then offered on behalf of the petitioner and on behalf of defendants, tending to show the true value of the lands and property referred to in the petition and appeal.

At the conclusion of the testimony the petitioner offered the following prayer:

Petitioner's Prayer.

The Baltimore Shipbuilding and Dry Dock Company of Baltimore City, the appellant corporation, prays the court to rule, as a matter of law, that the lands mentioned in the petition and appeal in these proceedings are not subject to taxation by the State of Maryland and the mayor and city council of Baltimore, for the reasons set up in the petition and appeal in these proceedings, and that, therefore, the assessment thereof for the purpose of taxation by such
36 State and municipal corporation, must be stricken out and declared to be null and void.

Refused.

Which prayer the court rejected, to the rejection of which prayer, the petitioner excepted and prayed the court to sign and seal this bill of exceptions; which is accordingly done this eighth day of January, 1903.

HENRY STOCKBRIDGE.

Test: HENRY A. SCHULTZ, *Clerk.*

STATE OF MARYLAND, } *sct:*
City of Baltimore, }

I, Henry A. Schultz, clerk of the Baltimore city court, do hereby certify, that the aforesaid is a full, true and entire transcript, taken from the record and proceedings of the said court in the therein entitled cause.

In testimony whereof, I hereunto set my hand and affix the seal of the Baltimore city court aforesaid, on this 9th day of January, nineteen hundred and three.

HENRY A. SCHULTZ,
Clerk of Baltimore City Court.

[Seal the Baltimore City Court.]

McCOMAS, GAITHER & GREENBAUM AND
TAYLOR & KEECH, *Att'ys for Appellant.*
W. P. WHYTE,
CHAS. W. FIELD, *Att'ys for Appellee.*

And now at this day, to wit, the second Monday in January, being the 12th day of the said month, in the year of our Lord one thousand nine hundred and three come into the court of appeals here, the parties aforesaid by their attorneys aforesaid.

Whereupon as well the record and proceedings aforesaid, and the order given in form aforesaid, being seen, and by the court of appeals here fully understood, and mature deliberation thereupon had, for that it appears to the court of appeals here, that there is no error in the record of proceedings aforesaid, nor in the giving of the order aforesaid: therefore it is considered by the court of appeals here, that the order aforesaid, given in form aforesaid, be in all things affirmed and stand in full force and effect, the said cause for error above assigned and alleged in anywise, notwithstanding.

37 And it is further considered by the court of appeals here, that the said Mayor and City Council of Baltimore, and the Judges of the Appeal Tax Court have execution against the said The Baltimore Shipbuilding and Dry Dock Company of Baltimore City as well for the cost and charges aforesaid adjudged unto them in the said Baltimore city court as also the sum of nineteen dollars and forty cents adjudged unto the said The Mayor and City Council of Baltimore and the Judges of the Appeal Tax Court by the court of appeals here, on their assent for their costs and charges which they have sustained by occasion of the delay of the execution of the order aforesaid, by pretext of the prosecution of the said appeal by the said The Baltimore Shipbuilding and Dry Dock Company of Baltimore City for the correcting of errors of and upon the premises as aforesaid, prosecuted, &c.

On the second day of April 1903 the court of appeals filed the following opinion in the words and figures following, to wit:

38 *Opinion of the Court of Appeals of Maryland.*

Filed April 2nd, 1903.

THE BALTIMORE SHIPBUILDING AND DRY DOCK COMPANY OF Baltimore City
vs.
THE MAYOR AND CITY COUNCIL OF BALTIMORE ET AL.

Opinion by Schmucker, J.

This is an appeal from an order of the Baltimore city court confirming the action of the appeal tax court of Baltimore city in assessing for taxation the lot of ground and dry dock of the appellant, situated at Locust point in said city. The lot of ground, on which the dock is constructed, with its water front forms part of the property acquired, and held by the United States and known as
39 Fort McHenry. The appellant holds that lot under a conditional grant from the United States as a site for a dry dock and the sole question presented by the record is whether the interest in the land and dock thus held by it are taxable by the State.

It is conceded that lands held by the United States are not taxable by the State within whose boundaries they lie and that this disability remains effective until the Government sells the lands when it terminates. Nor is there any dispute in the present case that the land in question forms part of the Fort McHenry tract which was purchased many years ago by the United States with the assent of the State of Maryland and that it was thereby made exempt from taxation by the State so long as it continued to be held by the United States. The only question in the case is whether the
40 transaction between the United States and the appellant under which the latter is now in possession and enjoyment of the land was such as to terminate its exemption from taxation.

It therefore become- necessary for us to consider what character of alienation by the United States of lands held by it for public purposes will prove effective to terminate or destroy their exemption from State taxation. The question in the precise form in which it is now presented is we believe a new one but some of the principles underlying it have received judicial consideration in other cases.

It has been repeatedly held that where a donee or purchaser of lands from the United States has fully complied with all of the conditions upon which he is entitled to a deed or patent for them and to their use he becomes the beneficial owner of them and they are subject to State taxation as his property although no deed or
41 patent may have been executed and delivered to him; but so long as any thing remains to be done or paid by the purchaser to perfect his right to the deed or patent the land remains ex-

empt from taxation, Kansas Pac. R. R. Co. *vs.* Prescott, 16 Wall. 603, North. Pac. R. R. Co. *vs.* Traill County, 115 U. S. 600, Union Pac. R. R. Co. *vs.* McShane, 22 Wall. 444, Husman *vs.* Durham, 165 U. S. 144.

In Central Pac. R. R. Co. *vs.* Nevada, 162 U. S. 512 and North. Pac. R. R. Co. *vs.* Patterson, 154 U. S. 130 it was held that the possessory claim of the railroad company to Government lands lying within a State was subject to taxation by the State notwithstanding the fact that the lands might thereafter be determined to be mineral lands and for that reason excluded from the operation of the grant from the United States to the railroad company. And in Maish *vs.* Arizona, 164, U. S. 597 a party in possession of lands under an unconfirmed Mexican land grant was held to have a valuable
42 equitable right which was subject to taxation by the State in which the lands were located although it might thereafter be adjudged that the lands in fact belonged to the United States. In North. Pac. R. R. Co. *vs.* Patterson, *supra*, the court quoted with approbation from Wisconsin R. Co. *vs.* Price Co. 133 U. S. 496 the statement "that he who has the right to property and is not excluded from its enjoyment shall not be permitted to use the legal title of the Government to avoid his just share of State taxation."

In the present case the appellant is in possession and enjoyment of the lands in question under a conveyance from the Secretary of War made in pursuance of an act of Congress approved June 19th 1878 which provided "That the Secretary of War be, and he is hereby directed to convey to the Baltimore Dry Dock Company of Baltimore City, a body corporate, created under the laws of
43 the State of Maryland, for the consideration hereinafter described, so much of the land belonging to the United States, in said city, known as the Fort McHenry tract, as lies between the northwestern boundary line of the said tract, and a line parallel thereto and distant four hundred and fifty feet therefrom, and between a line two hundred and fifty feet from the northern side of Fort avenue (a street or avenue of said city extended), and parallel thereto, and the north west branch of the Patapsco river.

SEC. 2. That in consideration of the said conveyance, and as the condition upon — the same is made, the said dry dock company shall be required to construct, upon the land conveyed as aforesaid, within two years from the date of the conveyance, an efficient "Simpson's improved dry dock," four hundred and fifty feet in length, and to accord to the United States the right to the use forever of the said drydock, at any time, for the prompt exam-
44 ination and repair of vessels belonging to the United States, free from charge for docking; and if at any time said property hereby conveyed shall be diverted to any other use than that herein named, or if the said drydock shall be at any time unfit for use for a period of six months, or more, the property hereby conveyed with all its privileges and appurtenance- shall revert to, and become the absolute property of the United States."

The deed followed the terms of the act of Congress and conveyed the land to the appellant upon the conditions therein set forth.

Under this conveyance the appellant did not acquire the absolute fee simple title to the land but took only an estate therein limited to a particular use under special conditions and liable to be defeated upon a misuser or non user; yet it did take a
45 valuable interest in the land of which it has been in full possession and enjoyment ever since. The deed to the appellant contains no restraint upon the alienation of the estate conveyed by it which partakes of all of the essential features of property. The fact that the United States retains and may at some future time exercise the right to retake possession of the land upon a breach of the conditions of the grant ought not, when no such breach is alleged, to enable the appellant to escape its just share of State taxation. If the land should ever revert to the United States under the terms of the grant the taxable interest in it would be destroyed and in that event the assessment of it should be stricken off the books of the tax department. Or if the United States should in the exercise of its reserved right use the dock on the land for its own vessels continuously or to such an extent as to materially deprive the appel-
46 lant of its possession and enjoyment, that circumstance would form proper ground for a suitable abatement for the time being of the assessment of the property for the purposes of State taxation.

Another ground on which the appellant rest- its claim for the exemption of this property from taxation is that the dock with its equipments is in effect an agency of the Government for the docking of it ships and therefore fall within the operation of the well recognized principle that the instruments and agencies used by the Federal Government to execute its sovereign powers are not taxable by the States in which they are located. It is settled however that this principle does not apply to the property of individuals or corporations which is not in the exclusive use or under the ex-
47 clusive control of the Government altogether the latter may have a fixed right to a preference in the use of such property when occasion may require.

It was held in Thompson *vs.* Union Pac. R. R. Co. 9 Wall. 579 that the property of the Union Pacific Railroad Co. was liable to State taxation although it was admitted that the road formed part of a system of roads constructed under the direction and authority of Congress, and that it was bound to perform certain duties for the Government and ultimately to pay to it a fixed percentage of its revenue and that its property was mortgaged to the United States. And in Union Pac. R. R. *vs.* Pemston, 18 Wall. 5 it was again held that the property of the railroad company was liable to State taxation although the road was to some extent an agent of the General Government designed to be employed and actually employed in the legitimate service of the Government both military and postal.
48 The court in that case said "It is therefore manifest that exemption of Federal agencies from State taxation is not depend-

ent upon the nature of the agents or upon the mode of their constitution or upon the fact that they are agents but upon the effect of the tax, that is, upon the question whether the tax does in truth deprive them of power to serve the Government as they were intended to serve it or does hinder the efficient exercise of their power. A tax upon their property has no such necessary effect."

Tested by the propersitions thus laid down it is apparent that the tax now under consideration does not deprive the appellant of the power to serve the Government as it was intended to serve it, and its payment cannot be escaped on the ground that it is an agency of the Government.

49 Of course if it should ever become necessary for the State or city to sell this property of the appellant for the non-payment of taxes nothing more could be sold than its conditional estate in the land and the permanent improvements thereon, subject to all of the rights of the United States therein.

It has been the custom and policy of this State, when it became necessary to sell for non-payment of taxes land in which several parties held different estates *all of which were subject to assessment and taxation*, to sell the fee simple estate in exercise of its sovereign power, Cooper *vs.* Holms, 71 Md. 720, Textor *vs.* Shipley, 86 Md. 424, but it is manifest that the sovereign power of the State does not embrace within its operation the right or estate of the Federal Government in the land now in question.

50 We hold that the conditional interest or estate of the appellant in this land, subject to the rights of the United States therein, constitutes property within the meaning of sec. 2 of art. 81 of the Code and is taxable by the State and the city of Baltimore. In view of the fact that the situation of the title to the land is such the absolute fee therein cannot be taxed and therefore could not be sold for non-payment of taxes the assessment books should be so modified as to show that the estate assessed is subject to the right and interest of the United States in the land and improvements.

The order appealed from will be affirmed.

Order affirmed with costs.

51 *Appeal Bond.*

Filed April 22nd, 1903.

Know all men by these presents, that we, the Baltimore Shipbuilding and Dry Dock Company of Baltimore City, a corporation of the State of Maryland, as principal, and the Fidelity and Deposit Company of Maryland, a body corporate of the State of Maryland, as surety, are held and firmly bound unto the Mayor and City Council of Baltimore, and Conway W. Sams, Solomon H. Freeburger and Oscar Leser, judge of the appeal tax court of said city, in the

full and just sum of one thousand dollars, to be paid to the said obligees, their certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally by these
52 presents.

Sealed with the respective corporate seals of said bodies corporate, attested by their respective secretaries, and signed on their behalf by their respective presidents this eighteenth day of April, 1903.

Whereas, lately at a term of the court of appeals of Maryland in suit depending in said court, between The Baltimore Shipbuilding and Dry Dock Company of Baltimore City, appellant, and The Mayor and City Council of Baltimore and the above named judges of the appeal tax court of said city, an order, judgment or decree was rendered against the said Baltimore Shipbuilding and Dry Dock Company of Baltimore City, and the said Baltimore Shipbuilding and Dry Dock Company of Baltimore City having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the order, judgment or decree in the aforesaid suit, and a citation directed to the above named ap-
53 pellees in said court of appeals of Maryland citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, that if the said Baltimore Shipbuilding and Dry Dock Company of Baltimore City shall prosecute said writ of error to effect, and answer all damages and costs if it fail to make said plea good, then the above obligation to be void; else to remain in full force and virtue.

{Seal Baltimore Shipbuilding & Dry Dock Co., Baltimore City, Maryland. Incorporated 1877.}

BALTIMORE SHIPBUILDING AND DRY DOCK COMPANY OF BALTIMORE CITY,
By JNO. QUITMAN LOVELL, *President.*

Attest: J. TRIPLETT HAXALL, *Secretary.*

54 FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By EWIN WARFIELD, *President.*

{Seal Fidelity and Deposit Company of Baltimore. Incorporated 1890.}

Attest: HARRY NICODEMUS, *Secretary.*

Approved by—

JAMES McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

55 STATE OF MARYLAND, *sct:*

I Thomas Parran, clerk of the court of appeals of Maryland, do hereby certify, that the foregoing record is a true transcript of the record and proceedings in the case of The Baltimore Shipbuilding and Dry Dock Company of Baltimore City, *vs.* The Mayor and City Council of Baltimore and The Appeal Tax Court, as taken from the records and proceedings of the said court of appeals.

And I do further certify that the said court of appeals of Maryland is the highest court of law or equity in said State in which a decision can be had in said case.

In testimony whereof, I have hereunto set my hand as clerk and affix, the seal of the said court of appeals this ninth day of May, A. D. 1903.

[Seal Court of Appeals, Maryland.]

THOMAS PARRAN,
Clerk Court of Appeals of Maryland.

[Endorsed:] Cost of transcript $9.25.

Endorsed on cover: File No. 18,936. Maryland court of appeals. Term No. 286. Baltimore Ship Building and Dry Dock Company of Baltimore City, plaintiff in error, *vs.* The Mayor and City Council of Baltimore *et al.* Filed May 16, 1903. File No. 18,936.